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SEP 16 2005

OFFICE OF PETITIONS

In re Application of :
Moyer, et al. :
Application No. 10/631,136 : ON PETITION
Filed: 31 July, 2003 :
Attorney Docket No. SC12888TH :

This is a decision on the petition filed on 11 January, 2005, under 37 C.F.R. §1.53, to obtain a filing date of 31 July, 2003, for page 22 (specification, description, claims, abstract) of the instant application.

For the reasons set forth below, the petition is **GRANTED**.

BACKGROUND

After this application was deposited on 31 July, 2003:

- on 9 September, 2004, Petitioner requested a “Corrected Filing Receipt” in response to the filing receipt mailed by the Office on 10 February, 2004;
- on 8 November, 2004, the Office mailed a Withdrawal of Previously Sent Notice, which appears to have been a reply to Petitioner’s request in that the mailing withdrew the “Notice” of “2/10/04,” and further was accompanied by a Notice of Omitted Items indicated that, while the application had been accorded a filing date, it appeared that Page 22 of the specification (description, claims and abstract) had been omitted on deposit. OIPE indicated that Petitioner might: contend via petition (with a copy of the item(s)) that the omitted item(s) had been

submitted and Petitioner might file a petition under 37 C.F.R. §1.182 (considered under 37 C.F.R. §1.53) as to that contention; submit the omitted item and accept the date of submittal as the filing date, or accept the application in the form the Office indicated it had been received. And OIPE set a two- (2-) month period for reply;

- over a 7 January, 2005, certificate of mailing, Petitioner filed the instant petition (with fee) on 11 January, 2005, with, *inter alia*, a copy of the date-stamped ("07/31/03") receipt card (see: MPEP §503¹), a copy of the entire application, including Page 22 of the specification (description, claims, abstract) as averred to have been filed, and, a request for a filing date of 31 July, 2003, for page 22 of the specification (description, claims, abstract) of the application.

Analysis

A search of the official file reveals that:

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as prima facie evidence of receipt of that item in the USPTO. (Emphasis supplied.)

- on 26 May, 2004, Petitioner deposited the instant application;
- the date-stamped receipt card evidences the following, in pertinent part:

* * *

Pages	Description
	* * *
X	Return Receipt Postcard
1 X	Utility Patent Application Transmittal Letter
1 X	Fee Transmittal - in duplicate
26 X	Specification
	* * *

The specification submitted by Petitioner with the instant petition is numbered sequentially with the description Pages 1 - 19, the Claims Pages 20 - 25, and abstract Page 26, and Pages 1 - 21 and 23 - 26 submitted by Petitioner match to those on file in the Office and no pages are duplicates.

Because Petitioner's receipt card adequately itemized the contents of the application on the receipt card, it is concluded that the application, including Page 22 of the specification (description, claims, abstract) was deposited with the Office on 31 July, 2003, and the Page 22 of specification (description, claims, abstract) subsequently was misplaced in the Office.

Accordingly, the application, including Page 22, is entitled to a filing date of 31 July, 2003.

The Notice of Omitted Items mailed on 8 November, 2004, was sent in error and is hereby vacated to the extent that it stated that the application was filed omitting Page 22 of the specification (description, claims, abstract).

CONCLUSION

The petition is granted and the petition fee waived and refunded.

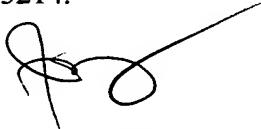
This application is released to OIPE for further processing with a filing date of 31 July, 2003, for the entire application, including page 22 of the specification (description, claims, abstract) with pages 1 - 21 and 23 - 26 of the specification (description, claims and abstract) and 4 sheets of drawings, as described in the specification, using:

- **pages 1 - 21 and 23 - 26 of specification (description, claims and abstract) and four (4) sheets of drawings deposited on 31 July, 2003; and**
- **and Page 22 of the specification (description, claims, abstract) deposited on 11 January,**

2005; and further

with direction to OIPE to correct Office records and provide to Petitioner a corrected filing receipt setting forth a filing date of 31 July, 2003, and reflecting therein that 26 pages of specification (description, claims and abstract) and 4 sheets of drawings were present on filing.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions